Supreme Court, U.S.
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No. 96-1480

In the Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF LOUISIANA, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

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QUESTIONS PRESENTED

1. Whether the district court erred in finding that annexations to the Shreveport City Court had not been precleared pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

2. Whether Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, is constitutional.

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Pursuant to Rule 18.6 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, moves that the judgment of the district court be affirmed.

OPINION BELOW

The opinion of the district court (J.S. App. 1a-68a) is reported at 952 F. Supp. 1151.

JURISDICTION

The order of the district court granting a preliminary injunction was entered on December 20, 1996. J.S. App. 73a-76a. Appellants filed a notice of appeal on January 16, 1997. J.S. App. 77a-80a. The court filed an opinion on January 24, 1997 (J.S. App. 1a-68a), and appellants filed another notice of appeal on February 5, 1997. J.S. App. 69a-72a. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

STATEMENT

1. The Louisiana legislature authorized the creation of the Shreveport City Court in 1898. J.S. App. 35a. The judges on the City Court are elected from—and have jurisdiction over—an area that comprises the City of Shreveport and an area called Ward 4 of Caddo Parish. *Ibid.* A portion of Ward 4 is within the Shreveport city limits. Memorandum as Filed on Behalf of the Defendants in Opposition to the Motion and Amended Motion for Preliminary Injunction, Exhs. 12-14 (R. 16).[1]

Until 1960, the Shreveport City Court consisted of one judge elected at-large. J.S. 3. The Louisiana legislature increased the size of the Shreveport City Court to two judges (to sit in Divisions A and B) in 1960, and also provided that the City Court's "territorial jurisdiction shall extend through the city and ward or wards wherein the city in which they are domiciled is located, as extended from time to time." 1960 La. Acts, No. 32; see J.S. App. 39a. A 1968 law specifically provided for the expansion of the City Court to include the areas annexed to the city's corporate limits. 1968 La. Acts, No. 6; J.S. App. 4a. In 1970, the Louisiana legislature added Division C to the City Court, increasing the number of judges on the court to three. 1970 La. Acts, No. 15; J.S. App. 4a. Neither the 1968 law nor the 1970 expansion to three judges was submitted for preclearance under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, until more than 20 years later. See J.S. App. 4a.

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[1] To the extent that the district court opinion suggests that none of Ward 4 is included within the Shreveport city limits, see J.S. App. 35a, the opinion is mistaken.

2. In January 1976, the City of Shreveport submitted 90 annexations to the Attorney General for review under Section 5. J.S. App. 3a; United States' Second Suppplemental Memorandum in Support of the Amended Motion for Preliminary Injunction, Attachment A (R. 26) (U.S. Second Supp. Mem.). The annexations had taken place over a period of years, but had never been submitted for preclearance. The submission did not specify the city offices that would be affected by the annexations. J.S. App. 3a. On March 31, 1976, the Attorney General objected under Section 5 to 51 of the annexations because those annexations would reduce the percentage of the City's black population eligible to vote for city council elections. See U.S. Second Supp. Mem., Attachment A. Two years later, the City submitted additional annexations for preclearance and also sought preclearance of certain voting changes embodied in the city charter. Those changes provided for city council members to be elected in single-member districts rather than at large, and they also provided for the direct election of the mayor rather than a commission form of government. J.S. App. 3a, 35a; The Plan of Government of the City of Shreveport, Charter of the City of Shreveport, 1978 (submitted Oct. 30, 1996) (City Charter); U.S. Second Supp. Mem., Attachment A. In response, the Attorney General withdrew the objection interposed to the 1976 submission and granted Section 5 preclearance to the submitted annexations and other voting changes. J.S. App. 3a.

Neither the 1976 nor the 1978 submissions by the City mentioned the effect of the annexations on the City Court. J.S. App. 3a. Indeed, the only mention of the City Court in any of the submitted materials was a one-sentence reference at the end of the 56-page city

charter. A section under the heading "Miscellaneous and Transitional Provisions" provided that "[t]here shall continue to be a city court with one or more judges and a marshal for the City of Shreveport and Ward Four of Caddo Parish, as now or hereafter provided by law." *Id.* at 45a (quoting City Charter at 53).

3. In January 1989, the City for the first time submitted to the Attorney General a request for Section 5 review that specifically mentioned the Shreveport City Court. J.S. App. 4a. At that time, the State, on the City Court's behalf, submitted for review Act No. 15, the 1970 state law creating the third judicial position (Division C) on the City Court. *Ibid.* In July 1989, the State also submitted for Section 5 review Act No. 6, the 1968 statute specifically providing that the City Court boundaries would expand as the City of Shreveport annexed new property. *Ibid.* In reviewing those changes, the Attorney General discovered that numerous annexations to the City Court boundaries had not been precleared. *Ibid.* The Attorney General therefore told the State that no determination could be made regarding the submitted voting changes until the State submitted the unprecleared annexations. *Id.* at 5a.[2]

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[2] In some cases, areas in Ward 4 of Caddo Parish have been annexed to Shreveport. It has been the government's position throughout this litigation that, although those annexations required preclearance before they could be used in electing the Shreveport municipal government (since they altered the composition of the city electorate), they did not require preclearance before they could be used in electing the City Court (since they did not change the composition of the City Court election district). The only annexations at issue in this case are those that increased the size of the area from which the City Court was elected.

In July 1992, the State, on behalf of the City, submitted new legislation providing for a change in the City Court's method of election (from at-large to one multi-member and one single-member district) and for the creation of a fourth judicial position (Division D) on the City Court. 1992 La. Acts, No. 501. The Attorney General again advised the City on September 18, 1992, that he was unable to make a determination regarding the submitted voting changes because annexations to the City Court's boundaries had not been submitted. J.S. App. 5a.

In April 1993, the City finally submitted for Section 5 review the annexations to the boundaries and electorate of the City Court that had been implemented between 1967 and 1992. J.S. App. 5a. In June 1993, the Attorney General asked for additional information. *Ibid.* A year later, the City submitted for Section 5 review additional annexations expanding the City Court boundaries and electorate and providing additional information concerning the previously submitted annexations. At the same time, the City resubmitted Louisiana Acts No. 6 (1968), No. 15 (1970), and No. 501 (1992) for review. J.S. App. 5a-6a. The City did not mention the 1960 statute (Act No. 32) that referred generally to the extension of the City Court's jurisdiction.

On September 6, 1994, the Attorney General interposed an objection under Section 5 to the submitted annexations to the City Court boundaries and electorate, as well as the voting changes caused by Louisiana Acts No. 6, No. 15, and No. 501. J.S. App. 6a. The objection was based on the Attorney General's finding that enlarging the City Court's boundaries as proposed would have a retrogressive effect on black voting strength, resulting in an 11-point decrease

(from 56% to 45%) in the percentage of black voters in the City Court's electorate. *Ibid.*; Complaint, Exh. A. The Attorney General told the City that "preclearance may not be granted unless the jurisdiction has obviated the retrogressive effect by adopting an election system 'which would afford [black voters] representation reasonably equivalent to their political strength in the enlarged community.'" Complaint, Exh. A at 2-3 (quoting *City of Richmond* v. *United States*, 422 U.S. 358, 370 (1975)). The Attorney General concluded that "[o]ur examination of both the election system which is legally effective under Section 5 (*i.e.*, two judges elected at large from designated positions, subject to a majority vote requirement) and the proposed four-judge system indicates that neither system fairly reflects minority voting strength in the expanded jurisdiction. *Id.* at 3. The letter asked the State to inform Department of Justice officials of its plans for City Court elections. *Id.* at 4; J.S. App. 6a.

In response to the Attorney General's objection, the State argued for the first time that Section 5 preclearance of the annexations to the City Court was unnecessary because the Attorney General had previously precleared the same annexations for the city council elections. In support of that argument, the State cited the 1960 Louisiana law (Act No. 32), which it had not provided or cited previously, and contended that that statute automatically extended the jurisdiction of city courts to any territory annexed by a city. The State argued that, as a result of that statute, elections for City Court Divisions A and B could be held using post-annexation boundaries. J.S. App. 6a. On December 11, 1995, the State also asked the Attorney General to reconsider the objec-

tions to the judicial positions created in 1970 and 1992 and to the new election system of one single-member district and one multi-member district. *Ibid.*

On February 9, 1996, the Attorney General denied the State's request for reconsideration and withdrawal of the objections. J.S. App. 7a. The Attorney General also informed the State and the City of Shreveport that preclearance of use of the post-annexation boundaries for City Council elections did not effectively preclear use of the post-annexation boundaries for City Court elections. The letter explained that until the Section 5 objection is withdrawn or a judgment from the United States District Court for the District of Columbia is obtained, "the objection by the Attorney General remains in effect and the proposed changes continue to be legally unenforceable." Complaint, Exh. B at 5; J.S. App. 7a. The letter again asked the State about its plans for the City Court elections scheduled for the Fall of 1996. Complaint, Exh. B at 5-6; J.S. App. 7a.

Neither the State nor the City responded to the Attorney General's request for information, nor was there any response to a later letter from the Voting Section of the Department of Justice. J.S. App. 7a. The Department of Justice ultimately received a copy of a June 26, 1996, letter from the Louisiana Assistant Attorney General to the Louisiana Secretary of State stating that "our position has been and remains that no such preclearance of [City Court] annexations is required." Complaint, Exh. D at 1; J.S. App. 7a-8a. The letter further advised that "elections for Divisions A and B, which have been precleared, unlike Divisions C and D, can be conducted this fall using the precleared city annexations for the voting boundaries." Complaint, Exh. D at 1; J.S. App. 8a.

4. Upon learning that the City intended to proceed with the City Court elections, the United States filed this action on August 12, 1996, against the State, the City, the City Court, and various officials (appellants here), and moved for a preliminary injunction to block the September 1996 elections. Complaint (R. 1); United States' Motion for a Preliminary Injunction (R. 3). Because the two judges seeking reelection were unopposed, they were deemed elected under Louisiana law. J.S. App. 8a. The United States then amended its complaint and motion for preliminary injunction, asking the court to enter a preliminary injunction barring the judges from receiving their commissions for another term. *Ibid.* In response, the City moved to dismiss the case for lack of subject-matter jurisdiction and for failure to state a claim upon which relief may be granted, arguing that Section 5 is unconstitutional. The City also sought an order compelling discovery concerning the Attorney General's decision to deny preclearance. *Id.* at 2a.

5. The district court denied appellants' three motions (including the claim that Section 5 is unconstitutional) and entered an order granting the preliminary injunction on December 20, 1996. J.S. App. 2a, 73a-76a. The court found that the annexations to the City Court's boundaries had not been precleared and therefore enjoined the State, City, and City Court from certifying the 1996 Division A and B election results, swearing in the judges or issuing commissions to them, and administering any City Court election that includes the unprecleared annexations. *Id.* at 75a. The court also ordered the appellants to file a judicial preclearance action in the United States District Court for the District of Columbia

within 45 days to seek preclearance for the unprecleared annexations. *Id.* at 76a.

The district court issued a thorough opinion supporting the preliminary injunction on January 24, 1997. J.S. App. 1a-68a. Relying on *Lopez* v. *Monterey County*, 117 S. Ct. 340, 349 (1996), the court explained that only three issues are relevant to a preliminary injunction action under Section 5: "whether a voting change is covered by § 5, whether that change has been precleared by the Attorney General or the District Court for the District of Columbia, and if not, what remedy is appropriate." J.S. App. 18a.

The district court held first that the annexations to the City Court were covered changes under Section 5. The court found reasonable the Attorney General's view that the City Court and the City are separate political subdivisions and that any changes to the City Court's boundaries therefore require separate preclearance. J.S. App. 34a-35a. The court noted that the City Court was established by its own state legislation different from that establishing the City and its governing body. *Id.* at 35a. The court also found that the electorate of the City Court is different from that for the city council and mayor, because the City Court's boundaries include areas not in the city limits that are in Ward 4 of Caddo Parish. *Ibid.* The court rejected appellants' argument that the annexations to the City Court did not have to be separately precleared because they were implemented pursuant to a pre-Voting Rights Act statute, the 1960 Act (No. 32)—the law that the State did not bring to the attention of the Attorney General until preclearance was denied. *Id.* at 39a-40a. Because the 1960 statute is only enabling legislation that authorizes future expansions of the City Court, the

district court held that any annexations that occurred pursuant to the legislation after 1964 require preclearance. *Ibid.*

With regard to the second criterion for entering a preliminary injunction under Section 5, the district court determined that the annexations to the City Court had not been precleared because the State and the City never brought the changes in the City Court's boundaries to the Attorney General's attention. J.S. App. 44a. The court relied on the principle "that changes to election practices (such as those affecting the Shreveport City Court) specifically must be brought to the attention of and receive approval from the Attorney General before those changes are deemed precleared." *Id.* at 43a. Nor did the district court accept the City's claim that Section 5's specificity requirement was satisfied by the one-sentence mention of the City Court in the 56-page city charter the City submitted in 1976. *Id.* at 45a-46a. The court noted that the city charter provision "does not detail the election practices as they relate to the City Court," *id.* at 45a, and that "the City did not specifically draw the Attorney General's attention to the purported nonretrogressive effect the annexations would have on the City Court elections," *id.* at 46a (citing *McCain* v. *Lybrand*, 465 U.S. 236 (1984), *Clark* v. *Roemer*, 500 U.S. 646 (1991), and *Lopez* v. *Monterey County*, 117 S. Ct. 340 (1996)). The court noted that "any ambiguity in the scope of a preclearance request must be resolved against the submitting authority." *Id.* at 47a-48a (quoting *Clark*, 500 U.S. at 656).

With respect to the remedy, the district court was mindful of appellants' interest in avoiding unnecessary disruption of the electoral and legal systems.

The court therefore ordered that the judges currently serving could hold over in those positions, without receiving commissions for the six-year term, until the jurisdiction sought judicial preclearance in the United States District Court for the District of Columbia and that action is resolved. J.S. App. 50a-52a. The court ordered appellants to seek the declaratory judgment within 45 days. *Id.* at 52a. Appellants have filed that action, which is pending in the United States District Court for the District of Columbia. *Louisiana* v. *United States*, No. 97-241.

ARGUMENT

The district court's conclusion that the annexations at issue here were voting changes to the Shreveport City Court that could not be enforced until precleared under Section 5 of the Voting Rights Act was compelled by this Court's decisions interpreting Section 5. This case does not present any unresolved legal issue, and the Court therefore should summarily affirm.

1. Louisiana is a "covered jurisdiction" under Section 5 of the Voting Rights Act. See 28 C.F.R. Pt. 51, App. A covered jurisdiction may not enforce a change in "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" without first obtaining preclearance from the Attorney General or the United States District Court for the District of Columbia. 42 U.S.C. 1973c; *Clark* v. *Roemer*, 500 U.S. 646, 652 (1991). In an action to enforce the preclearance requirements of Section 5, a three-judge district court may not consider whether the change is discriminatory in purpose or effect. *Lopez* v. *Monterey County*, 117 S. Ct. 340, 348-349 (1996). By the terms of Section

5, that substantive question is reserved for the Attorney General or the United States District Court for the District of Columbia. The enforcement court may consider only whether the change is subject to Section 5 and whether it has been precleared. See, *e.g.*, *id.* at 349; *NAACP* v. *Hampton County Election Comm'n*, 470 U.S. 166, 181 (1985); *City of Lockhart* v. *United States*, 460 U.S. 125, 129 n.3 (1983); *Perkins* v. *Matthews*, 400 U.S. 379, 383-386 (1971). "If voting changes subject to § 5 have not been precleared, § 5 plaintiffs are entitled to an injunction prohibiting the State from implementing the changes." *Clark*, 500 U.S. at 652-653.

The "structure and purpose of the preclearance requirement plainly counsel against resolving" any ambiguities in the scope of a preclearance request in favor of the submitting authority. *McCain* v. *Lybrand*, 465 U.S. 236, 257 (1984). Any changes that have not been explicitly and unambiguously identified in a preclearance request are not precleared. *Young* v. *Fordice*, 117 S. Ct. 1228, 1237 (1997). Where a jurisdiction calls the Attorney General's attention to only some of the respects in which a new electoral scheme alters existing practice, "the Attorney General's failure to object to the submission [does] not constitute preclearance of elements in the scheme that were not submitted." *McCain*, 465 U.S. at 256 n.28; see also *Clark*, 500 U.S. at 658; *Hampton County Election Comm'n*, 470 U.S. at 181-182; *Allen* v. *State Bd. of Elections*, 393 U.S. 544, 571 (1969).

Applying these principles, the district court properly enjoined the judges on the Shreveport City Court from receiving their commissions and required appellants to seek judicial preclearance in the United States District Court for the District of Columbia.

The court correctly determined that the City Court and the City were two separate political entities, and that annexations to the City Court had to be separately and explicitly precleared. J.S. App. 35a. The City Court does not encompass the same area as the City, and includes parts of Caddo Parish that are not within the city limits. *Ibid.* Moreover, the City Court and the City do not use the same election methods, since the City uses single-member districts for the city council, while the City Court uses a multi-member district. *Ibid.* Appellants do not allege that the district court's finding that the court is a separate political jurisdiction from the City is clearly erroneous. Given that finding, the court did not commit legal error in holding that annexations to the court were separate changes requiring preclearance.

Appellants argue that the annexations to the City Court were not "changes" requiring preclearance. They contend (J.S. 10) that the annexations to the City Court were implemented pursuant to a 1960 law, and that having to submit the annexations as they affected the City Court would result in "review by the Justice Department of a practice in effect prior to November 1, 1964." The 1960 law, however, provided only that the jurisdiction of the City Court "shall extend through the city and ward or wards wherein the city of their domicile is located, as extended from time to time." 1960 La. Acts, No. 32, § 3. As the district court found (J.S. App. 39a), although that statute did not require preclearance because it predated the effective date of the Voting Rights Act, "each annexation to the City Court implemented pursuant to [the 1960] law after November 1, 1964, comes within § 5's preclearance requirement." The court concluded that under appellants' view, all types of

changes enacted pursuant to pre-Voting Rights Act enabling statutes would not be subject to preclearance, regardless of their effect on minority voting rights—a result clearly inconsistent with the language and purposes of Section 5. *Id.* at 40a (citing *Terrazas* v. *Slagle*, 821 F. Supp. 1154, 1161 (W.D. Tex. 1992)).

It is also significant that appellants did not alert the Attorney General to the 1960 law (or the more explicit 1968 law) in 1976 when they sought preclearance for the annexations to the City's boundaries. See J.S. App. 3a-4a. If appellants had provided that information to the Attorney General and expressly noted that the annexations would affect the boundaries and electorate of a separate political subdivision, the Attorney General's preclearance (if forthcoming) would have been effective for both jurisdictions. There would thus have been no need, in appellants' words (J.S. 10), to submit the annexations "a second time for review." Section 5, however, requires that the submitting authority make explicit the changes that are being proposed. The Attorney General was under no obligation in this case to review all Louisiana statutes to determine if annexations to the City affected anything other than elections within the jurisdiction the submitting authority identified.

Appellants also argue (J.S. 11-14) that even if the annexations to the City Court were "changes" separate from those represented by the annexations to the city limits, they were precleared by the Attorney General's 1978 preclearance letter. The preclearance letter itself, however, does not mention the City Court. J.S. App. 45a. The only mention of the City Court in the submissions that led up to the 1978

preclearance letter was in the 56-page city charter. The single-sentence reference to the City Court does not inform the reader that the City Court's judges are elected, and it does not say anything about their method of election. Therefore, appellants err in stating (J.S. 14) that it was "patently obvious * * * the Shreveport City Court must have been considered under the City Charter submission." As the district court held, "the Attorney General is not charged (nor can she be), with sifting through a jurisdiction's voluminous submission to determine all possible voting changes that have been submitted for preclearance." J.S. App. 46a (citing *McCain*, *Clark*, and *Lopez*) (footnote omitted).

2. Appellants also argue (J.S. 14-21) that Section 5 of the Voting Rights Act is unconstitutional. In *South Carolina* v. *Katzenbach*, 383 U.S. 301, 324 (1966), and again in *City of Rome* v. *United States*, 446 U.S. 156, 172-183 (1980), this Court, after full consideration, rejected the arguments appellants advance here. Appellants offer no reason why this Court should revisit settled law in this area. Accordingly, regardless of whether the district court was correct in holding that the question of the constitutionality of Section 5 was not within its jurisdiction, its judgment necessarily would have been the same under this Court's settled jurisprudence, and that judgment should be affirmed.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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